

for disqualification of the presiding officer, which shall set forth with particularity the grounds of alleged disqualification. Any such petition shall be filed with the hearing clerk, who shall immediately transmit it to the judicial officer and inform the presiding officer. The record of the proceeding also shall immediately be transmitted to the judicial officer. After such investigation or hearing as the judicial officer deems necessary, the judicial officer shall either deny the petition or direct that another presiding officer be assigned to the proceeding. The petition, and notice of the order of the judicial officer, shall be made a part of the record and served on the parties; if any record is made on such a petition, it shall be a part of the record of the proceeding.

[43 FR 30510, July 14, 1978, as amended at 60 FR 8467, Feb. 14, 1995]

**§ 202.119 Rule 19: Fees of witnesses.**

Witnesses subpoenaed before the presiding officer, and witnesses whose depositions are taken, shall be entitled to the same fees and mileage as are paid for like services in the courts of the United States. Fees and mileage shall be paid by the party at whose instance the witness appears or the deposition is taken.

**§ 202.120 Rule 20: Official notice.**

Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical or scientific fact of established character: *Provided*, That the parties shall be given notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

**§ 202.121 Rule 21: Intervention.**

At any time after docketing of a proceeding and before commencement of a hearing, oral or written, therein, the presiding officer may, upon petition, and for good cause shown, permit any person to intervene therein. The petition shall state with preciseness and particularity: (a) The petitioner's relationship to the matters involved in the proceeding; (b) the nature of the material the petitioner intends to present in

evidence; (c) the nature of the argument the petitioner intends to make; and (d) the reasons why the petitioner should be allowed to intervene. Any such petition, and notice of the order thereon, shall be served on the parties and made a part of the record in the proceeding.

**§ 202.122 Rule 22: Ex parte communications.**

(a) At no stage of the proceeding between its docketing and the issuance of the final decision shall the presiding officer or judicial officer discuss ex parte the merits of the proceeding with any party, or attorney or representative of a party: *Provided*, That procedural matters shall not be included within this limitation; and *Provided further*, That the presiding officer or judicial officer may discuss the merits of the case with such a person if all parties to the proceeding or their attorneys or representatives have been served with notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

(b) No party, or attorney or representative of a party, or other person not an employee of the Department, shall make or knowingly cause to be made to the presiding officer or judicial officer an ex parte communication relevant to the merits of the proceeding.

(c) If the presiding officer or judicial officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding:

(1) Such communication if written, or a memorandum stating the substance of such communication if oral; and

(2) A copy of any written response or a memorandum stating the substance of any oral response thereto.

(d) Copies of all such items placed or included in the record, as provided in this section, shall be served on all parties.

(e) For purposes of this section "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is

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not given, but it shall not include a request for a status report on any matter or the proceeding.

### § 202.123 Rule 23: Action by Secretary.

The Secretary may act in the place and stead of a presiding officer or the judicial officer in any proceeding hereunder, or any matter in connection therewith.

## PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

Sec.

203.1 [Reserved]

203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.

203.3 [Reserved]

203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.

203.5 Statement with respect to market agencies paying the expenses of livestock buyers.

203.6 [Reserved]

203.7 Statement with respect to meat packer sales and purchase contracts.

203.8—203.9 [Reserved]

203.10 Statement with respect to insolvency; definition of current assets and current liabilities.

203.11 [Reserved]

203.12 Statement with respect to providing services and facilities at stockyards on a reasonable and nondiscriminatory basis.

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203.14 Statement with respect to advertising allowances and other merchandising payments and services.

203.15 Trust benefits under sections 206 and 207 of the Act.

203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.

203.17 Statement of general policy with respect to rates and charges at posted stockyards.

203.18 Statement with respect to packers engaging in the business of custom feeding livestock.

203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

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## 9 CFR Ch. II (1–1–00 Edition)

### § 203.1 [Reserved]

### § 203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.

(a) In recent months, the Department has received information, confirmed by investigation, that a number of packers subject to the Packers and Stockyards Act have made gifts of meat to Government employees responsible for conducting service activities of the Department. Such gifts have the implications of fraud, even if not made specifically for the purpose of influencing these employees in the performance of their duties.

(b) It is a violation of the Meat Inspection Act for any person, firm, or corporation to give to any employee of the Department performing duties under such act anything of value with intent to influence such employee in the discharge of his duties, or for such employee to receive from any person, firm, or corporation engaged in interstate or foreign commerce any gift given with any intent or purpose whatsoever (21 U.S.C. 90). Under the Federal meat grading regulations, the giving or attempting to give by a packer of anything of value to any employee of the Department authorized to perform any function under such regulations is a basis for the withdrawal of Federal meat grading service (7 CFR 53.13). The receiving by an employee of the Department of any gift from any person for whom grading, inspection, or other service work is performed is specifically prohibited by Departmental regulations.

(c) Upon the basis of paragraphs (a) and (b) of this section, it is the view of the Department that it is an unfair and deceptive practice in violation of section 202(a) of the Packers and Stockyards Act (7 U.S.C. 192(a)) for any person subject to the provisions of Title II of said Act to give or offer to give meat, money, or anything of value to any Government employee who performs inspection, grading, reporting, or regulatory duties directly relating to the purchase or sale of livestock or the preparation or distribution of meats, meat food products, livestock products